

✓

Library.

The State of South Carolina #1476



Office of the Attorney General

Opinion No. 85-28
896

T. TRAVIS MEDLOCK T. TRAVIS MEDLOCK
ATTORNEY GENERAL ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549 POST OFFICE BOX 11549
COLUMBIA, S.C. 29211 COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970 TELEPHONE 803-758-3970

March 29, 1985 ch 29, 1985

Steven W. Hamm, Administrator
S.C. Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250-5757

Dear Mr. Hamm:

In a letter to this Office you referenced Section 34-11-70(3), Code of Laws of South Carolina, 1976 which provides a service charge on dishonored checks and questioned whether such charge would be applicable to checks given as payments on consumer loans and consumer credit sales. Such provision states specifically that:

"(a) service charge of not more than ten dollars is payable by the drawer of any draft, check, or other written order to the payee of the instrument when the draft, check or other written order is presented for payment in whole or in part of any then existing debt, including but not limited to consumer credit transactions, and is dishonored."

As stated, included are checks given for payment "of any then existing debt, including but not limited to consumer credit transactions."

In a previous opinion of this Office dated August 29, 1984, it was stated that a restricted lender licensed pursuant to Sections 34-29-10 et seq. of the Code could charge a borrower the ten dollar fee authorized by Section 34-11-70(3). In reaching its conclusion, the provisions of Section 34-29-140 which set forth certain charges specifically permitted to be collected by restricted lenders were examined. The opinion concluded that even though the ten dollar fee authorized by

REQUEST LETTER

Continuation Sheet Number 2

To: Steven W. Hamm, Administrator

March 29, 1985

Section 34-11-70(3) was not a charge specifically provided by provided by Section 34-29-140, a restricted lender could still make such a charge for a dishonored check. The opinion indicated that Section 34-11-70(3) should be read broadly and that the ten dollar service charge should not be construed as being a charge made in connection with a loan transaction or a condition of extension of credit.

Similarly, in the opinion of this Office, the ten dollar service charge provided by Section 34-11-70(3) would be applicable to dishonored checks given as payments on consumer loans and consumer credit sales. I have examined the statutory provisions pertaining to consumer credit sales and consumer loans, namely, Sections 37-2-101 et seq. and 37-3-101 et seq. of the Code and am unaware of any absolute prohibitions to a charge such as that authorized by Section 34-11-70 being collected in the referenced circumstances.

Moreover, as stated above, the ten dollar service charge is payable by the drawer of a dishonored check when such check "...is presented for payment in whole or in part of any then existing debt, including but not limited to consumer credit transactions...." As shown, consumer credit transactions are particularly referenced. Moreover, it is clear that the provision should be read broadly to include dishonored checks given as payment on any "existing debt." Therefore, the ten dollar service charge would also be applicable to dishonored checks given as payments on consumer loans as well.

If there are any questions concerning the above, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:  BY:

Robert D. Cook
Executive Assistant for Opinions